

Burns, Marlene

From: Alford, Patrick
Sent: Wednesday, June 20, 2012 11:04 AM
To: Burns, Marlene
Subject: Fwd: Cancellation of Planning Commission Hearing
Attachments: Letter to Alford re Cancellation, Revision and Recirculation.doc; ATT17747686.htm

Newport Banning Ranch

PA2008-114

Please distribute

Begin forwarded message:

From: Steve Ray <steve.banningranch@hotmail.com>
Date: June 20, 2012 10:48:03 AM PDT
To: Patrick Alford <palford@newportbeachca.gov>
Cc: Aaron Harp <aharp@newportbeachca.gov>, Dave Kiff <dkiff@newportbeachca.gov>
Subject: Cancellation of Planning Commission Hearing

Hi Patrick,

Attached is a letter stating the contention of the Banning Ranch Conservancy that the Planning Commission hearing scheduled for Thursday, June 21st must be cancelled and that the EIR must be revised and recirculated for the reasons specified in the letter. I would appreciate an expedient reply. Please forward copies to the Newport Beach staff members and officials listed at the end of the letter. I will forward to the other agencies. Please contact me at 310/961-7610. Thanks.

Steve Ray
Executive Director
Banning Ranch Conservancy
www.banningranchconservancy.org
310-961-7610



Via Email Transmission

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In Memoriam

June 20, 2012

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Cancellation of Planning Commission Hearing, Revision and Recirculation of
Newport Banning Ranch Draft Environmental Impact Report ("EIR")

Dear Mr. Alford,

Significant new information has come to the attention of the Banning Ranch Conservancy which calls for the cancellation of the Newport Beach Planning Commission hearing ("hearing") on the Newport Banning Ranch EIR and project application (scheduled Thursday, June 21, 2012). This information requires significant revisions, additional environmental impact analyses, identification of mitigation and, ultimately, a recirculation of the EIR. Revision of the project design and application may also be necessary.

The information in question is known to the applicant and is, most likely, also known by the City. If so, the City should already have determined the need to cancel or delay the hearing and be proceeding to do so.

CEQA Guideline 15088.5 states that a "lead agency is required to recirculate an EIR when significant new information is added...after public notice is given...for public review...but before certification. As used in this section, the term 'information' can include changes in the project or environmental setting as well as additional data or other information." The information could show that a "new significant environmental impact would result" and/or that a "substantial increase in the severity of an environmental impact would result" and/or that the "draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded". This CEQA guideline and the provisions therein are also supported in substantial case law.

The significant information above referenced regards three matters, to wit:

1. Re-Mapping of Vegetation

Expert biologists from public resource agencies U.S Fish and Wildlife Service (“FWS”) and California Coastal Commission (“CCC”) toured the Newport Banning Ranch property several weeks ago. They reviewed the vegetation maps provided in the EIR, upon which environmental analyses were determined, and noted serious discrepancies between those maps and what their own expert eyes revealed – that the EIR maps were, simply put, unreliable, in other words, wrong. Since the analyses of biological resources, the plants and the wildlife dependent on them, is a critical element of the EIR for this project, and that it is unreliable, the resource agencies directed the applicant to re-map the vegetation on Newport Banning Ranch. The applicant has now retained the consulting firm, Dudek, whose staff are engaged on site. The target date to complete the re-mapping is early August. Appropriate analyses of impacts, mitigation and potential redesign required would be next. Recirculation of the EIR would follow. Further, we are not aware that there has been any public disclosure, certainly no EIR disclosure, of this matter, which is a violation of the disclosure requirements of CEQA. This whole issue is undoubtedly a significant development for this project and its EIR. By itself, it is sufficient to justify cancellation of the hearing. But – there’s more.

2) Notice of Violation

The CCC has issued a Notice of Violation (“NOV”), with more action expected, to the applicant regarding unpermitted removal of “major vegetation”, in other words, illegal mowing of environmentally sensitive habitat areas (“ESHA”) on Newport Banning Ranch. This is significant because this illegal activity has been ongoing and had occurred prior to the preparation of the EIR, thereby calling into question the reliability of the information therein, and the analyses and conclusions drawn, and the resultant mitigation or lack thereof. The real value of the disturbed habitat must be determined, CCC hearings will be held, mitigation would have to be performed elsewhere on site (such as in the case of the previous violations), thereby potentially removing additional acreage from the development footprint, requiring further analyses and so on. Again, there has been no public or EIR disclosure of this issue.

3) Expert Analysis by Synectecology

An expert report on air quality and noise issues in the EIR has been submitted to the City on behalf of Newport Crest resident, Ms. Dorothy Kraus. The comprehensive due diligence review was performed by Synectecology Environmental Consulting Services principal, Mr. Todd Brody, an expert in air quality and noise analysis. In his report, Mr. Brody notes such a plethora of outmoded modeling, factual misstatements, faulty analyses, lack of information and supporting documentation and even conclusory statements dangerous to human health in the EIR’s sections on noise and air quality that the CEQA guidelines require that a “draft EIR...so fundamentally and basically inadequate and conclusory in nature” must be redone and recirculated.

The above “significant new information” and the provisions of CEQA Guideline Section 15088.5 fully justify and require review and recirculation of the EIR, thereby necessitating the halt of any further Planning Commission consideration. Notice in Section 15088.5(e) that a “decision not to recirculate an EIR must be supported by substantial evidence in the administrative record”. This indicates that CEQA favors recirculation of an EIR in making the determination under Section 15088.5. This is consistent with both statutory and case law stating "the California Environmental Quality Act (CEQA) (Pub. Resources Code 21000 et seq.) is to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal. App. 4th 1214.

Even the City’s General Plan would require consistency with the efforts of the state and federal agencies on remapping the vegetation and resolving the violations of the Coastal Act, prior to processing the EIR. Applicable General Plan policies are as follows:

Policy Overview: “While the Plan indicates the maximum intensity of development that would be allowed on the property (Banning Ranch), this will ultimately be determined through permitting processes that are required to satisfy state and federal environmental regulatory requirements.”

LU 6.5.3 Habitat and Wetlands: “Restore and enhance wetlands and wildlife habitats, in accordance with the requirements of state and federal agencies.”

LU 6.5.6 Coordination with State and Federal Agencies: “Work with appropriate state and federal agencies to identify wetlands and habitats to be preserved and/or restored and those on which development will be permitted.”

Further, CEQA Guideline 15006(i) requires Public Agencies reduce delay and paperwork by: "Integrating CEQA requirements with other environmental review and consulting requirements." Finally, CEQA Guideline 15006(g) requires Public Agencies reduce delay and paperwork by: "Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it."

As is clear above, the City cannot rush to judgment in this process. The City can no longer circumvent state laws like CEQA and the Coastal Act, nor ignore its own General Plan. And, the City must respect the jurisdictional responsibilities of other local, state and federal agencies involved in this project application process, the EIR and related issues.

We ask that you provide an expeditious reply and notice of cancellation of the Planning Commission hearing on the Newport Banning Ranch EIR and project application. Compliance with the law and consideration of the valuable time of the interested public will be greatly appreciated.

Please contact our Executive Director, Steve Ray, at 310/961-7610 or via email at steve.banningranch@hotmail.com for questions or for further information.

Thank you.

Sincerely,

Steve Ray /s/

Steve Ray
Executive Director
Banning Ranch Conservancy

cc: Chair Toerge and Planning Commissioners
Mayor Gardner and City Council Members
City Manager Dave Kiff
City Attorney Aaron Harp
Community Development Director Kimberly Brandt
California Coastal Commission
U. S. Fish & Wildlife Service
California Department of Fish and Game
BRC File # LGL-3